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NOTICE OF ALLOWANCE AND FEE(S) DUE

22428 7590 07/23/2007

FOLEY AND LARDNER LLP
 SUITE 500
 3000 K STREET NW
 WASHINGTON, DC 20007

EXAMINER

KRASS, FREDERICK F

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 07/23/2007

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,989	04/05/2001	Jed W. Fahey	046585/0138	4463
TITLE OF INVENTION: CANCER CHEMOPROTECTIVE FOOD PRODUCTS				

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700	\$300	\$0	\$1000	10/23/2007

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax **(571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

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Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

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09/825,989	04/05/2001	Jed W. Fahey	046585/0138	4463

TITLE OF INVENTION: CANCER CHEMOPROTECTIVE FOOD PRODUCTS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700	\$300	\$0	\$1000	10/23/2007

EXAMINER	ART UNIT	CLASS-SUBCLASS
KRASS, FREDERICK F	1614	424-725000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1	_____
2	_____
3	_____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____

Date _____

Typed or printed name _____

Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

5-K2



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KRASS, FREDERICK F	
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Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
 (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 278 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 278 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability

Application No.

09/825,989

Applicant(s)

FAHEY ET AL.

Examiner

Frederick Krass

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment dated 03/03/07.
2. ☒ The allowed claim(s) is/are 48-51, 53-63 and 65-75.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other Drawings (04/05/01) accepted.

Frederick Krass
 Primary Examiner
 Art Unit: 1614



Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The following changes have been made:

As the first line of the specification there has been inserted:

--- This application is a divisional of USSN 09/425,890, filed 10/25/1999 and now USP 6,242,018, which is a divisional of USSN 09/118,867, filed 07/20/1998 and now USP 6,177,122, which is a divisional of USSN 08/840,234, filed 04/11/1997 and now USP 5,968,567. ----

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

Previously cited prior art

As previously argued by applicant, the prior art of record actually teaches away from the instantly claimed methods for making foods. Specifically, Jones et al (USP 4,158,656) notes at column 3, lines 48-53 that glucosinolates and isothiocyanates should be removed prior to producing any food products. Anjou et al (USP 4,083,836) discloses substantially the same.

Furthermore, the prior art of record also teaches away from harvesting vegetables up to and including the 2-leaf stage. See for instance Pusateri et al (USP 5,686,108) at column 2, lines 48-51, which notes that mature broccoli florets are preferable to other parts of the plant because of their higher nitrile content. Accordingly, no issue of obviousness-type double patenting is seen with regard to claims relating to methods of making food products in the which the selection of same is required (e.g., USP 5,698,567 and USP 5,725,895).

Newly cited prior art

The examiner additionally cites Omary et al (USP 6,436,450) as teaching away from the instantly claimed extraction methods (claims 48 et seq.). Specifically, the prior art teaches at column 2, lines 47-52 that plant tissues containing glucosinolates and isothiocyanates should not be subjected to temperatures which would inactivate myrosinase (exactly the opposite of applicant's claimed method).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick Krass whose telephone number is (571) 272-0580. The examiner can normally be reached at (571) 272-0580 on Monday through Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number: 09/825,989

Page 5

Art Unit: 1614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass
Primary Examiner
Art Unit 1614



Form PTO-1449 (MODIFIED)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		ATTY. DOCKET NO. 046585/0138		SERIAL NO. 09/825,989 <i>Unassigned</i>		
INFORMATION DISCLOSURE CITATION (Use several sheets if necessary)				APPLICANT Jed FAHEY et al.				
				FILING DATE April 5, 2001		GROUP ART UNIT Unassigned		
U.S. PATENT DOCUMENTS								
EXAMINER INITIAL	REF	DOCUMENT NUMBER	DATE	NAME	CLASS	SUB- CLASS	FILING DATE IF APPROPRIATE	
<i>FK</i>		5,725,895	3/98	Fahey et al.	426	49		
<i>FK</i>		5,411,986	5/95	Cho et al.	514	514		
FOREIGN PATENT DOCUMENTS								
	REF	DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB- CLASS	TRANSLATION	
							YES	NO
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)								
<i>FK</i>	A3	The Sproutletter, Number 25, Nov. - Dec. 1984.						
	A4	"The Sproutletter" May-June 1981, No. 4.						
	A5	Roy Bruder, Ph.D., Discovering Natural Foods, (including pgs.203-209), Woodbridge Press, 1982.						
	A6	Brian R. Clement, Hippocrates Health Program, (including pgs 7-11), Hippocrates Publications, 1989.						
<i>FK</i>	A7	Jethro Kloss, The Back to Eden Cookbook, pgs. 61-61, Woodbridge Press, 1974.						
EXAMINER <i>Krass, Frederick</i>				DATE CONSIDERED <i>7/18/07</i>				
* EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include any copy of this form with next communication to applicant.								

Form PTO-1449 (MODIFIED)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		ATTY. DOCKET NO. 046585/0138	SERIAL NO. <u>09/825,789</u> Unassigned
INFORMATION DISCLOSURE CITATION (Use several sheets if necessary)				APPLICANT Jed FAHEY et al.	
				FILING DATE April 5, 2001	GROUP ART UNIT Unassigned
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)					
FL	A8	Steve Meyerowitz, Sproutmann Kitchen Garden Cookbook, The Sprouthouse, Inc., pgs. 178-179, 290, 1994.			
	A9	Steve Meyerowitz, Sprout It, One week from Seed to Salad, The Sprouthouse, Inc., (including pgs. 84-85, 120-123), June 1994.			
	A10	Steve Meyerowitz, The Complete Guide to Sprouting, Sprouts The Miracle Food, Sproutman Publications, (including pgs. 121-2), May 1998.			
	A11	Esther Munroe, Sprouts to Grow and Eat, (including pgs. 2-15), Dec. 1974.			
	A12	Jean Hewitt, The New York Times "New Natural Foods Cookbook", Avon Books, pgs. 200-203, 1982.			
	A13	Martha H. Oliver, Add a Few Sprouts To Eat Better for Less Money, Pivot Original Health Books, (including pgs. 52-53, 118-119), 1975.			
	A14	James C. Schmidt, Horticulture Facts, "Growing Sprouts Indoors", (Rev. 4/81). (1981).			
	A15	Angnes Toms, The Joy of Eating Natural Foods, The Complete Organic Cookbook, pgs. 318-319, Nov. 1971.			
	A16	Karen Cross Whyte, The Complete Sprouting Cookbook, Troubador Press, (including pgs. 57-59), 1973.			
	A17	Ann Wigmore, The Sprouting Book, Avery Publications, (including pgs. 29-37), 1986.			
	A18	Debra Schwarze, Growing Sprouts, Neb Guide, Jan. 1989.			
	A19	John Tobe, Sprouts Elixir of Life", 1970.			
	A20	Alicia Bay Laurel, "Living on the Earth" a Vintage Book. (1980).			
V	A21	David Ehrlich with George Wolf, Foreward by Peter Albright, M.D., "The Bowell Book", Schocken Books, 1981.			
FL	A22	"The Good News Sprouts Recipe Book" ISGA, Aug. 1992.			
Examiner Krass, Frederick				Date Considered 7/18/07	

Page 3 of 6

Form PTO-1449 (MODIFIED)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		ATTY. DOCKET NO. 046585/0138		SERIAL NO. <u>07/825,987</u> Unassigned	
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				FILING DATE April 5, 2001		GROUP ART UNIT Unassigned	
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)							
Fk	A23	Ann Wigmore, "The Hippocrates Diet and Health Program", Avery Publications, 1984.					
	A24	Sprouting Publications Oahspe Foundation, Health and Sprouting Supplies. (1982).					
	A25	Sproutletter, #41, Summer, 1989.					
	A26	The Sproutletter, Number 27, March-April 1985.					
	A27	Steve Meyerowitz, Growing Vegetables Indoors", 1983.					
	A28	The Sproutletter, Number 24, Sept.-Oct. 1984.					
	A29	The Sproutletter, Issue 33, Spring 1987.					
	A30	The Sproutletter, Number 28, May-June 1985.					
	A31	The Sproutletter, Number 26, Jan-Feb 1985.					
	A32	Sprouting Publications, Health and Sprouting Supplies. (1982).					
	A33	The Sproutletter, Number 29, July - August 1985.					
	A34	Sproutletter, #40, Spring, 1989.					
	A35	The Sproutletter, Number 32, Summer. (1985).					
✓	A36	Sproutletter, #44, March 1991.					
Fk	A37	Sproutletter, #36, Winter, 1987-88.					
Examiner Krass, Frederick				Date Considered 7/18/07			

Form PTO-1449 (MODIFIED)	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY. DOCKET NO. 046585/0138	SERIAL NO. Unassigned 09/825, 18
INFORMATION DISCLOSURE CITATION (Use several sheets if necessary)		APPLICANT Jed FAHEY et al.	
		FILING DATE April 5, 2001	GROUP ART UNIT Unassigned

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

AK	A38	Sproutletter, #39, Fall, 1988.
	A39	Sproutletter, #43, May/June 1990.
	A40	Sproutletter, #38, Summer, 1988.
	A41	Sprouting Publications Health and Sprouting Supplies. (1988).
	A42	Spring Sale for Members Only. (1988).
	A43	The Sproutletter, A newsletter of useful and unusual information on sprouts, raw foods and nutrition. (1987).
	A44	The Sproutletter, #31, Winter. (1988).
	A45	Deirdre Purdy, ed., The Summer Kitchen, A Farmers' Market Cookbook, 1981.
	A46	Viktoras Kulvinskas, M.S. Co-Director Hippocrates Health Institute, "Love Your Body or how to be a live food lover", 1974.
	A47	The Sprout House Article from Newspaper. (1988).
	A48	New Prices - New Products, July 1985 order form.
	A49	Steve Meyerowitz, Indoor Vegetable Kit, The Sprout House. (1985).
	A50	The Sprout House Newsletter, Issue #15, August, 1992.
	A51	Sproutman's Exotic Seeds for Sprouting 100% Organically Grown Order Form. (1985).
PK	A52	Complaint for Patent Infringement (Brassica Protection Products, LLC v. The Sproutman, Inc. dated September 20, 1999.

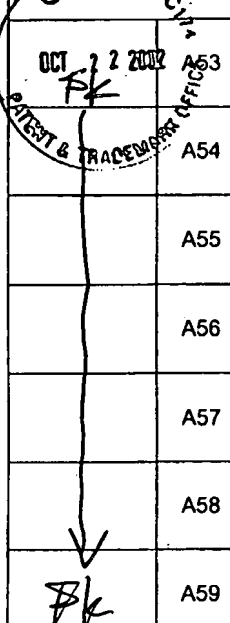
Examiner
Krass, Frederick

Date Considered
7/18/07

Page 5 of 6

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		FILING DATE April 5, 2001	GROUP ART UNIT Unassigned

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

	A53	Murry Tizer's Answer, Affirmative Defenses and Counterclaims dated June 28, 1999
	A54	The Sproutman, Inc.'s Answer, Affirmative Defenses and Counterclaims dated June 28, 1999
	A55	Request for Reexamination of U.S. Patent No. 5,725,895 filed October 11, 1999
	A56	Sprout it! One Week From Seed to Salad, Steve Meyerowitz (The Sprout House, Inc., Great Barrington, MA), Pages 20-21, 58, 85-86, 120-123, 1993.
	A57	Munroe, E., Sprouts to Grow and Eat, the Steven Greene Press, (1974), pp. 2-9 and 14-15
	A58	Schmidt, James C., Growing Sprouts Indoors, Cooperative Extension Service of the University of Illinois at Urbana-Champaign, College of Agriculture (1984) (pamphlet)
	A59	Whyta, K.C., The Complete Sprouting Cookbook, Troubador Press (1983), pp 10-16, 57-60
	A60	The Sprout House cookbook, Steve Meyerowitz (The Sprout House, Inc. Great Barrington, MA 1983), pages 20-21, 85, 120-123.
	A61	The Good New Sprouts Recipe Book, International Sprout Growers Association, pp. 1-8, August 1992. Posner et al., "Design and Synthesis of Bifunctional Isothiocyanate Analogs of Sulforaphane."
	A62	Posner et al., "Design and Synthesis...and potency as Inducers of Anticarcinogenic Detoxication Enzymes", Journal of Medicinal Chemistry, Vol. 37, No. 1, pp. 170-175, 1994
	A63	Zhang et al., "A major inducer of Anticarcinogenic protective enzymes from broccoli; isolation And education of structure", Proc. Natl. Acad. Sci. USA, Vol. 89, pp. 2399-2403, March 1992.
	A64	Prochaska et al. "Rapid detective of inducers of enzymes that protect against carcinogens", Proc. Nat'l. Sci. USA Vol. 89, pp. 2394-2388, March 1992
A65	Zhang et al., "Anticarcinogenic activities of sulforaphane and structurally related synthetic norbomyl isothiocyanates", Proc. Natl. Sci. USA, Vol. 91, pp. 3147-3150, April 1994.	
A66	Prochaska et al., "Regulatory Mechanisms of Monofunctional and Bifunctional Anticarcinogenic Enzyme, Inducers in Murine Liver, Cancer Research Vol. 48, pp. 4776-4782, September 1988.	

EXAMINER

Kruss, Frederick

Date Considered

7/18/07

Page 6 of 6

Form PTO-1449 (MODIFIED)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		ATTY. DOCKET NO. 046585/0138		SERIAL NO. <u>69/825,989</u> Unassigned	
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				FILING DATE April 5, 2001		GROUP ART UNIT Unassigned	
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)							
FK	A67	Prochaska et al., "Direct Measurement of NAD(P)H: Quinone Reductase from Cells Cultured in Microtiter Wells: A Screening Assay for...Inducers", analytical Biochemistry, Vol. 169, pp. 328-336, 1988.					
		Beecher, "Cancer prevention properties of varieties of Brassica oleracea: a review 1-3", Am J. Clin. Nutr.: 59 (suppl.) pp. 1166 s-1170s, 1994.					
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		Patent Abstract of Japan Sect. No. 305, Vol. 9, No. 2371, p.2, September 1985.					
V FK	A72	Barrett et al., "Protective Effect of Cruciferous Seed Meals Against Mouse Colon Cancer", Cereal Foods World 613, Vol. 39, No. 8, pp. 613, August 1994.					
	A73						
	A74						
	A75						
	A76						
EXAMINER Krass, Frederick				DATE CONSIDERED 7/18/07			
* EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include any copy of this form with next communication to applicant.							

Notice of References Cited	Application/Control No. 09/825,989	Applicant(s)/Patent Under Reexamination FAHEY ET AL.	
	Examiner Frederick Krass	Art Unit 1614	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,436,450	08-2002	Omary et al.	424/755
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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Bib Data Sheet

CONFIRMATION NO. 4463

SERIAL NUMBER 09/825,989	FILING OR 371(c) DATE 04/05/2001 RULE	CLASS 514	GROUP ART UNIT 1614	ATTORNEY DOCKET NO. 046585/0138	
APPLICANTS Jed W. Fahey, Eldersburg, MD; Paul Talalay, Baltimore, MD;					
** CONTINUING DATA ***** This application is a DIV of 09/425,890 10/25/1999 PAT 6,242,018 which is a DIV of 09/118,867 07/20/1998 PAT 6,177,122 which is a DIV of 08/840,234 04/11/1997 PAT 5,968,567					
** FOREIGN APPLICATIONS *****					
IF REQUIRED, FOREIGN FILING LICENSE GRANTED** SMALL ENTITY ** ** 05/30/2001					
Foreign Priority claimed <input type="checkbox"/> yes <input checked="" type="checkbox"/> no 35 USC 119 (a-d) conditions <input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> Met after met Verified and <u> </u> Acknowledged <u> </u> Allowance <u> </u> Examiner's Signature <u> </u> Initials <u> </u>		STATE OR COUNTRY MD	SHEETS DRAWING 2	TOTAL CLAIMS 20	INDEPENDENT CLAIMS 2
ADDRESS 22428					
TITLE Cancer chemoprotective food products					
FILING FEE RECEIVED 441	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:		<input type="checkbox"/> All Fees <input type="checkbox"/> 1.16 Fees (Filing) <input type="checkbox"/> 1.17 Fees (Processing Ext. of time) <input type="checkbox"/> 1.18 Fees (Issue) <input type="checkbox"/> Other _____ <input type="checkbox"/> Credit		

PATENT APPLICATION FEE DETERMINATION RECORD

Effective October 1, 2000

Application or Docket Number

9/825989

CLAIMS AS FILED - PART I

(Column 1) (Column 2)

TOTAL CLAIMS	20	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	20 minus 20 =	0
INDEPENDENT CLAIMS	2 minus 3 =	0
MULTIPLE DEPENDENT CLAIM PRESENT <input type="checkbox"/>		

* If the difference in column 1 is less than zero, enter "0" in column 2

SMALL ENTITY TYPE ☒**OR OTHER THAN SMALL ENTITY**

RATE	FEE
BASIC FEE	355.00
X\$ 9=	
X40=	
+135=	
TOTAL	355

RATE	FEE
BASIC FEE	710.00
X\$18=	
X80=	
+270=	
TOTAL	

CLAIMS AS AMENDED - PART II

(Column 1) (Column 2) (Column 3)

AMENDMENT A	10/22/02	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	24	Minus	20	= 4
	Independent	2	Minus	3	=
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>				

SMALL ENTITY**OR OTHER THAN SMALL ENTITY**

RATE	ADDITIONAL FEE
X\$ 9=	36
X40=	
+135=	
TOTAL ADDIT. FEE	36

RATE	ADDITIONAL FEE
X\$18=	
X80=	
+270=	
TOTAL ADDIT. FEE	

(Column 1) (Column 2) (Column 3)

AMENDMENT B	7/16/03	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	24	Minus	24	=
	Independent	2	Minus	3	=
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>				

RATE	ADDITIONAL FEE
X\$ 9=	
X40=	
+135=	
TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE
X\$18=	
X80=	
+270=	
TOTAL ADDIT. FEE	

(Column 1) (Column 2) (Column 3)

AMENDMENT C	1/20/04	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
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	Independent	2	Minus	3	=
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RATE	ADDITIONAL FEE
X\$ 9=	
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+135=	
TOTAL ADDIT. FEE	


RATE	ADDITIONAL FEE
X\$18=	
X80=	
+270=	
TOTAL ADDIT. FEE	


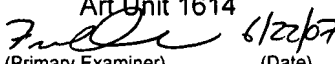
* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20."

***If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3."

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

Issue Classification 	Application/Control No. 09/825,989	Applicant(s)/Patent under Reexamination FAHEY ET AL.
	Examiner Frederick Krass	Art Unit 1614

ISSUE CLASSIFICATION												
ORIGINAL					INTERNATIONAL CLASSIFICATION							
CLASS		SUBCLASS			CLAIMED				NON-CLAIMED			
424		725			A	01	N	65	/00			/
CROSS REFERENCES					A	61	K	36	/00			/
CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)											
424	755	774	776	779	A	23	L	1	/28		/	
426	425	429	431	489	B	09	B	3	/00		/	
426	615	629	655					/			/	
210	755	766	767	768				/			/	
210	774	904						/			/	
 (Assistant Examiner) (Date) 7/19/07 (Legal Instruments Examiner) (Date)					Frederick Krass Primary Examiner Art Unit 1614  (Primary Examiner) (Date) 6/22/07				Total Claims Allowed: 26 O.G. Print Claim(s) 1 O.G. Print Fig. NONE			

<input checked="" type="checkbox"/> Claims renumbered in the same order as presented by applicant												<input type="checkbox"/> CPA		<input checked="" type="checkbox"/> T.D.		<input type="checkbox"/> R.1.47	
Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original		
	1		31		13		61		91		121		151		181		
	2		32		14		62		92		122		152		182		
	3		33		15		63		93		123		153		183		
	4		34				64		94		124		154		184		
	5		35		16		65		95		125		155		185		
	6		36		17		66		96		126		156		186		
	7		37		18		67		97		127		157		187		
	8		38		19		68		98		128		158		188		
	9		39		20		69		99		129		159		189		
	10		40		21		70		100		130		160		190		
	11		41		22		71		101		131		161		191		
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	20	3	50				80		110		140		170		200		
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	24	6	54				84		114		144		174		204		
	25	7	55				85		115		145		175		205		
	26	8	56				86		116		146		176		206		
	27	9	57				87		117		147		177		207		
	28	10	58				88		118		148		178		208		
	29	11	59				89		119		149		179		209		
	30	12	60				90		120		150		180		210		

Search Notes



Application/Control No.

09/825,989

Examiner

Frederick Krass

Applicant(s)/Patent under
Reexamination

FAHEY ET AL.

Art Unit

1614

SEARCHED

[illegible]

INTERFERENCE SEARCHED

Class	Subclass	Date	Examiner
See	attached		
	printout.	6/22/2007	FK

SEARCH NOTES (INCLUDING SEARCH STRATEGY)

[illegible]

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** **Mail Stop ISSUE FEE**
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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

22428 7590 07/23/2007
FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,989	04/05/2001	Jed W. Fahey	046585/0138 037677-0256	4463
TITLE OF INVENTION: CANCER CHEMOPROTECTIVE FOOD PRODUCTS				

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700 120	\$300	\$0	\$1000 1020	10/23/2007
EXAMINER	ART UNIT	CLASS-SUBCLASS				
KRASS, FREDERICK F	1614	424-725000				

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 FOLEY & LARDNER LLP

2 _____

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3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

JOHNS HOPKINS SCHOOL OF MEDICINE

BALTIMORE, MD

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☒ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☒ Issue Fee
☒ Publication Fee (No small entity discount permitted)
☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
☒ Payment by credit card. Form PTO-2038 is attached.
☒ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 19-0741 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature

Richard C. Peet

Date

September 9, 2007

Typed or printed name

Registration No. 35,792

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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5-K20

Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jed FAHEY *et al.*
Title: CANCER CHEMOPROTECTIVE FOOD PRODUCTS
Appl. No.: 09/825,989
Filing Date: 4/5/2001
Examiner: FF Krass
Art Unit: 1614

AMENDMENT UNDER 37 CFR § 1.312

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant acknowledges receipt of a Notice of Allowance in the above-captioned application. Applicant is paying the issue fee concurrently with this filing and requests that the following amendments be entered:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this document.

Remarks/Arguments begin on page 5 of this document.

Please amend the application as follows:

Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

Amendments to the Claims:

This listing of claims will replace all prior versions of claims in the application:

Listing of Claims:

Claims 1-47. (Canceled).

Claim 48. (Currently Amended): A method of extracting glucosinolates ~~and~~ or isothiocyanates from plant tissue comprising homogenizing said plant tissue in an excess of a mixture of dimethyl sulfoxide, acetonitrile and dimethylformamide at a temperature sufficient to inactivate myrosinase enzyme activity.

Claim 49. (Previously Presented): The method of claim 48, wherein the ratio of dimethyl sulfoxide:acetonitrile:dimethylformamide is 1:1:1.

Claim 50. (Previously Presented): The method of claim 48, wherein said temperature is between 0°C and the freezing temperature of the extraction mixture.

Claim 51. (Previously Presented): The method of claim 48, wherein said temperature is between -50°C and the freezing temperature of the extraction mixture.

Claim 52. (Canceled)

Claim 53. (Previously Presented): The method of claim 48, wherein said plant tissue is selected from the group consisting of cruciferous sprouts measured after 3 days of growth, cruciferous seeds, plants or plant parts.

Claim 54. (Previously Presented): The method of claim 53, wherein said sprouts, seeds, plants or plant parts have at least 200,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.

Claim 55. (Previously Presented): The method of claim 53, wherein said sprouts, seeds, plants or plant parts have at least 300,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.

Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

Claim 56. (Previously Presented): The method of claim 53, wherein said sprouts, seeds, plants or plant parts have at least 400,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.

Claim 57. (Previously Presented): The method of claim 53, wherein said sprouts, seeds, plants or plant parts have at least 500,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.

Claim 58. (Currently Amended): A method of making a food product comprising extracting glucosinolates ~~and~~ or isothiocyanates from cruciferous plant tissue having at least 200,000 units per gram fresh weight of Phase 2 enzyme-inducing potential, recovering said glucosinolates ~~and~~ or isothiocyanates and adding said glucosinolates ~~and~~ or isothiocyanates to food;

wherein said extracting comprises contacting said plant tissue with a non-toxic solvent at a temperature sufficient to inactivate myrosinase enzyme activity.

Claim 59. (Previously Presented): The method according to claim 58, wherein said solvent is water.

Claim 60. (Previously Presented): The method of claim 59, wherein said water is at 100°C.

Claim 61. (Previously Presented): The method according to claim 58, wherein said solvent is liquid carbon dioxide.

Claim 62. (Previously Presented): The method according to claim 58, wherein said solvent is ethanol.

Claim 63. (Previously Presented): The method of claim 58, wherein said plant tissue is selected from the group consisting of cruciferous sprouts measured after 3 days of growth, cruciferous seeds, plants and plant parts.

Claim 64. (Canceled).

Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

Claim 65. (Previously Presented): The method of claim 63, wherein said sprouts, seeds, plants or plant parts have at least 300,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.

Claim 66. (Previously Presented): The method of claim 63, wherein said sprouts, seeds, plants or plant parts have at least 400,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.

Claim 67. (Previously Presented): The method of claim 63, wherein said sprouts, seeds, plants or plant parts have at least 500,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.

Claim 68. (Previously Presented): The method of claim 58 wherein said food product is selected from the group consisting of a bread, a drink, a soup, a salad, a sandwich and a cereal.

Claim 69. (Previously Presented): The method of claim 68 wherein said drink is a tea.

Claim 70. (Previously Presented): The method of claim 58 wherein said extracting further comprises homogenizing said plant tissue with said non-toxic solvent.

Claim 71. (Previously Presented): The method of claim 63 wherein said sprouts, seeds, plants or plant parts have at least 250,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.

Claim 72. (Previously Presented) The method of claim 63, wherein said plants are broccoli.

Claim 73. (Previously Presented) The method of claim 63, wherein said plant parts are from broccoli.

Claim 74. (Previously Presented) The method of claim 63, wherein said cruciferous sprouts are broccoli sprouts.

Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

Claim 75. (Previously Presented) The method of claim 63, wherein said cruciferous seeds are broccoli seeds.

Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

REMARKS

This amendment is being filed along with the payment of the issue fee. Entry of the foregoing amendment is respectfully requested. As explained in the Examiner's Reason for Allowance, the prior art teaches away from the currently claimed methods of incorporating glucosinolates or isothiocyanates into food products and teaches removing both ingredients before preparing food products. Applicants have amended the extraction and food production methods claims to provide for the extraction or use of either glucosinolates or isothiocyanates in the claimed methods. This understanding is provided on page 19, bottom paragraph of the Specification. Accordingly, entry of the amendment is requested.

Claims 48-51, 53-63 and 65-75 remain pending in this application.

It is believed that no fees are due in connection with this Rule 312 amendment. In the event this is not correct, the undersigned authorizes the Commissioner to charge Deposit Account No. 19-0741.

Respectfully submitted,

Date October 9, 2007

By Richard C. Peet

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5483
Facsimile: (202) 672-5399

Richard C. Peet
Attorney for Applicants
Registration No. 35,792

Electronic Patent Application Fee Transmittal

Application Number:	09825989			
Filing Date:	05-Apr-2001			
Title of Invention:	CANCER CHEMOPROTECTIVE FOOD PRODUCTS			
First Named Inventor/Applicant Name:	Jed W. Fahey			
Filer:	Stephen Bradford Maebius/MICHELE FRANCIS			
Attorney Docket Number:	037677-0256			
Filed as Small Entity				
Utility Filing Fees				
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Utility Appl issue fee	2501	1	720	720
Publication fee for republication	1505	1	300	300

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Extension-of-Time:				
Miscellaneous:				
Total in USD (\$)				1020

Electronic Acknowledgement Receipt

EFS ID:	2293822
Application Number:	09825989
International Application Number:	
Confirmation Number:	4463
Title of Invention:	CANCER CHEMOPROTECTIVE FOOD PRODUCTS
First Named Inventor/Applicant Name:	Jed W. Fahey
Customer Number:	22428
Filer:	Stephen Bradford Maebius/MICHELE FRANCIS
Filer Authorized By:	Stephen Bradford Maebius
Attorney Docket Number:	037677-0256
Receipt Date:	09-OCT-2007
Filing Date:	05-APR-2001
Time Stamp:	12:06:50
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment was successfully received in RAM	\$ 1020
RAM confirmation Number	10699
Deposit Account	

File Listing:

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Information:					
2	Amendment after Notice of Allowance (Rule 312)	amdmt1312.pdf	153831 4f7842e5aa1a54f58cd81d960765cd0c 47c044e3	no	6
Warnings:					
Information:					
3	Fee Worksheet (PTO-06)	fee-info.pdf	8271 c4e7751cd169aa6896a4df35fe44b4ef3 45b3746	no	2
Warnings:					
Information:					
Total Files Size (in bytes):			250490		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,989	04/05/2001	Jed W. Fahey	037677-0256	4463
22428	7590	10/22/2007		
FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER KRASS, FREDERICK F	
			ART UNIT	PAPER NUMBER
			1614	
			MAIL DATE	DELIVERY MODE
			10/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Rule 312 Communication	Application No.	Applicant(s)	
	09/825,989	FAHEY ET AL.	
	Examiner	Art Unit	
	Frederick Krass	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

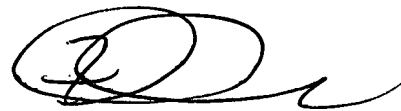
1. ☒ The amendment filed on 09 October 2007 under 37 CFR 1.312 has been considered, and has been:

- a) ☐ entered.
- b) ☐ entered as directed to matters of form not affecting the scope of the invention.
- c) ☐ disapproved because the amendment was filed after the payment of the issue fee.

Any amendment filed after the date the issue fee is paid must be accompanied by a petition under 37 CFR 1.313(c)(1) and the required fee to withdraw the application from issue.

- d) ☒ disapproved. See explanation below.
- e) ☐ entered in part. See explanation below.

The specification and originally filed claims always use the term "and" in conjunction with the terms "glucosinolates" and "isothiocyanates". Applicant points to the bottom paragraph of page 19 of the specification as supporting the "understanding" that the two were disclosed in the alternative, but that paragraph merely describes "sources of cancer chemoprotectants", followed by a listing of particular plant species; it specifically mentions neither glucosinolates nor isothiocyanates. Accordingly, the proposed amendment will not be entered since it would introduce potential new matter.



Frederick Krass
Primary Examiner
Art Unit: 1614

Atty. Dkt. No. (Old) 046585-0138

Atty. Dkt. No. (New) 037677-0256

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jed FAHEY *et al.*

Title: CANCER CHEMOPROTECTIVE FOOD PRODUCTS

Appl. No.: 09/825,989

Filing Date: 4/5/2001

Examiner: FF Krass

Art Unit: 1614

AMENDMENT UNDER 37 CFR § 1.312

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant acknowledges receipt of a Notice of Allowance in the above-captioned application. Applicant is paying the issue fee concurrently with this filing and requests that the following amendments be entered:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this document.

Remarks/Arguments begin on page 5 of this document.

Please amend the application as follows:



Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jed FAHEY *et al.*
Title: CANCER CHEMOPROTECTIVE FOOD PRODUCTS
Appl. No.: 09/825,989
Filing Date: 4/5/2001
Examiner: FF Krass
Art Unit: 1614

Letter Requesting Reconsideration of Decision to Deny Entry of Amendment

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants respectfully request that the Office reconsider its decision to deny entry of the previously filed amendment. Applicant acknowledges receipt of a Notice of Allowance in the above-captioned application, as well as the refusal to enter the previously filed Amendment under 37 CFR § 1.312. Applicants have paid the issue fee and request reconsideration of the decision. This letter does not attempt to further amend the claims as requested in the earlier amendment. Consequently, we will not repeat the requested amendments in order to clarify that this request should not be viewed as a 312 amendment after payment of the issue fee.

Applicants thank Examiner Krass for the courtesy of a telephone discussion on October 24, 2007, regarding this file. Applicants apologize for any confusion in directing the Examiner to the appropriate portions of the Specification and appreciate the further consideration of these amendments.

As explained in the Examiner's Reason for Allowance, the prior art teaches away from the currently claimed methods of incorporating glucosinolates or isothiocyanates into

Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

food products and teaches removing both ingredients before preparing food products. Applicants have amended the extraction and food production methods claims to provide for the extraction or use of either glucosinolates or isothiocyanates in the claimed methods. This understanding is provided on **page 22, last full paragraph, lines 18-28**, of the Specification. Consequently, Applicants do not believe entry of the amendments would constitute new matter and entry of the amendment is requested.

This application belongs to a patent family with the following US patents: US 5968505, US 5968567, US 6177122, and US 6242018. Previous claims have been granted to products or methods containing glucosinolates or isothiocyanates. For example, US 6177122 contains the following claims:

12. A food product comprising a source of glucosinolates or isothiocyanates, wherein said glucosinolate or isothiocyanate source is a cruciferous seed or cruciferous sprout, or extract of said seed or sprout, and wherein said sprout is (A) harvested between the onset of germination up to and including the 2-leaf stage, and (B) not a Brassica oleracea variety capitata, Lepidium sativum, Sinapis alba, Sinapis nigra, or Raphanus sativus sprout.

28. A food product according to claim 12, wherein said source of glucosinolates or isothiocyanates is a cruciferous sprout.

30. A food product according to claim 29, wherein said food product is selected from the group consisting of salads, sandwiches and drinks or shakes.

31. A food product according to claim 28, wherein said sprout has been subject to lyophilization, drying, extraction, freezing, baking, cooking, or boiling prior to incorporation into said food product.

32. A food product according to claim 31, wherein said food product is selected from the group consisting of baked goods, teas, soups, cereals, pills, tablets, drinks, and shakes.

33. A food product according to claim 12, wherein said source of glucosinolates or isothiocyanates is crucifer seed or cruciferous sprout extract.

Other patents contain methods directed to glucosinolates without requiring isothiocyanates. US 6242018 contains independent claims 1 and 7 directed to “A method of preparing a food product rich in glucosinolates...”

Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

Applicants hope the above clarifies the nature of the earlier filing and request entry of the earlier filed amendment.

Claims 48-51, 53-63 and 65-75 remain pending in this application. It is believed that no fees are due in connection with this letter. In the event this is not correct, the undersigned authorizes the Commissioner to charge Deposit Account No. 19-0741.

Respectfully submitted,

Date 12/25/07

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5483
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By Richard C. Peet

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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,989	12/04/2007	7303770	037677-0256	4463

22428 7590 11/14/2007
FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment is 1141 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site <http://pair.uspto.gov> for additional applicants):

Jed W. Fahey, Eldersburg, MD;
Paul Talalay, Baltimore, MD;